

Salise (Migration) [2024] AATA 1932 (14 June 2024)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANTS:	Ms Gina Capuno Salise Miss Giana Ann Diane Salise
REPRESENTATIVE:	Mr Byron Tan (MARN: 9579239)
CASE NUMBER:	2110393
HOME AFFAIRS REFERENCE(S):	BCC2019/247507
MEMBER:	Donna Petrovich
DATE:	14 June 2024
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the applications for reconsideration, with the direction that the first named applicant meets the following criteria for a Subclass 820 visa: • cl 820.211(2) of Schedule 2 to the Regulations • cl 820.221(1)(a) of Schedule 2 to the Regulations • As the applicant (first named applicant) meets the criteria for the grant of the Subclass 820 Partner visa, it follows that the secondary applicant satisfies the requirement for the Subclass 820 Partner visa grant and meets cl 820.321(a) of Schedule 2 to the Regulations.

Statement made on 14 June 2024 at 1:40pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class TU) visa – Subclass 820 (Spouse) – genuine and continuing relationship – circumstances of meeting and progress of relationship – previous visits on tourist visas – validly married – joint bank account, expenses and purchases, household and activities – extensive, consistent and credible evidence – sponsorship form unable to be located – technical difficulties while making application without assistance – departmental policy – form need not be lodged at time of application – member of family unit child – decision under review remitted

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65

Migration Regulations 1994 (Cth), Schedule 2, cls 820.211(2)(c), 820.221(1)(a), 820.321(a)

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to refuse to grant the applicants Partner (Temporary) (Class UK) visas under s 65 of the *Migration Act 1958* (Cth) (the Act). The applicants applied for the visas on 29 January 2019. The delegate refused to grant the visas on 22 July 2021.
2. The delegate decided that insufficient evidence was supplied to the Department to confirm that the legislative requirements were met by the applicant (the first named applicant) or that she had an Australian citizen sponsor. In forming the view to refuse the visa application, the delegate found that the applicant did not meet cl 820.211(2) of the *Migration Regulations* 1994 (Cth).
3. Consequently, the delegate assessed the secondary applicant against cl 820.321(a) and decided that cl 801.321(a) of the Regulations was not met.
4. The applicants appeared before the Tribunal on 12 June 2024 to give evidence and present argument.
5. The couple were introduced by a mutual friend who is friends with the applicant's sister-in-law.
6. The applicant (the first named applicant) is a 47 year old Filipino woman. At the time of the couple's meeting, the applicant was an unmarried single parent of the secondary applicant, Giana Ann Diane Salise.
7. The applicant was working in Hong Kong as a domestic staffmember for a family for 1 ½ years.
8. In January 2016 the sponsor visited the applicant in Hong Kong. They got on very well. They spent weekends together and stayed at the sponsor's hotel.
9. During this time the sponsor asked the applicant to be his girlfriend and they commenced their relationship.
10. They also spent time together in the Philippines. The applicant introduced the sponsor to her family including her daughter who at that time lived with her parents.
11. The applicant came to Australia on a Tourist visa on 4 occasions between August 2017 and November 2018. She stayed with the sponsor in Northern Victoria at his home.
12. While in Australia the applicant was introduced to the sponsor's mother and her partner. She was also introduced to the sponsor's children, grandchildren and ex-wife.
13. In March/April 2018 the couple holidayed together in Cambodia.
14. The couple lodged the application for Partner visa on 29 January 2019. They provided oral hearing testimony that they had difficulty because of their computer's age and found the questions confusing.
15. On 4 October 2018 they were married in Cussens Park, Tatura in Northern Victoria in a Civil Ceremony. A copy of the couple's Victorian Marriage Certificate is contained in the

Department file. A few close family and friends attended the wedding. After the wedding they went to the local hotel for a meal with their guests.

16. The Tribunal heard that the applicant is a very accomplished cook. Therefore, she does most of the cooking. She also does the cleaning, whilst the sponsor does all of the home maintenance on the property which he owns. He also maintains the caravan and both vehicles owned by the couple. The sponsor also takes out the garbage.
17. The couple have projects that they undertake together. They garden and keep chickens. The applicant also helps the sponsor with mechanical tasks when required.
18. They share a joint bank account. The sponsor pays the utility bills. They both contribute to the grocery bills. Together the couple have purchased vehicles and new white goods for their home. They have purchased a property in the Philippines which is in the applicant's name.
19. The secondary applicant lives with her mother and stepfather. She helps with some of the household duties. At the hearing she spoke of her love of the countryside and working with her mother in a textiles factory. The secondary applicant provided oral testimony at the hearing about how good it was to see her mother in a happy relationship. She also detailed their activities and family holidays.
20. The Tribunal finds the evidence prior to and at the hearing to be consistent and credible. The Tribunal accepts the couple's explanation that there were difficulties experienced by the applicant in submitting the required form to the Department in relation to the Partner application. The applicant explained that they did not have any assistance from a Migration Agent or Lawyer in relation to the Partner visa application. Further, she detailed that their computer was old and unreliable. Consequently they could not convert the files into a format that were able to be sent to the Department.
21. The representative supplied a submission to the Tribunal dated 14 February 2022. The representative's submission claims that the sponsor form was submitted on 7 September 2021 and quotes TRN EGOL3RZDV as the reference number. It further details that a copy of the sponsor form is attached for the Tribunal's reference.
22. However, on review of the both the Tribunal and Department files, the Tribunal is not able to locate the form *40SP - Sponsorship for a partner to migrate to Australia* which the representative references in their submission.
23. Irrespective of the inability to locate the form 40SP in file, the Tribunal finds in favour of the applicant. This Tribunal finding is based on the current Departmental policy in the PAMS, together with the extensive evidence supplied prior to and at the hearing.
24. In forming a decision in favour of the applicant the Tribunal relies on the relevant policy in the PAMS. The relevant part of the PAMS extracted below verbatim reads:

25. *3.2.11. Sponsorship for a Partner to Migrate to Australia*

26. *An application for a Subclass 820 visa can be made without an accompanying sponsorship form completed by the sponsor, unless the applicant is a person to whom section 48 of the Act applies. As an application for a Subclass 820 visa must be made at the same time and place as an application for a Subclass 801 visa, if an applicant is a person to whom section 48 of the Act applies, additional requirements to make a valid Subclass 801*

visa application must be met. This includes a completed sponsorship form signed by the applicant's sponsoring spouse or de facto partner (see subparagraph 1124B(3)(e)(ii)).

27. Consequently, the Tribunal finds that cl 820.211(2)(c) of the Regulations is satisfied by the applicant at the time of visa application.
28. It is apparent from the supporting evidence that Peter Charles Willis at the time of application was the Australian citizen sponsor of the applicant. As per the PAMS, the form *40SP – Sponsorship for a partner to Migrate to Australia* need not be lodged at the time of application in order for cl 820.211(2)(c) of the Regulations to be satisfied by the applicant.
29. The Tribunal on reviewing the evidence accepts that the couple's relationship is a genuine, ongoing spousal relationship as required under s 5F of the Act and that the applicant is sponsored at the time of application by the Australian citizen spouse, Mr Peter Charles Willis as per cl 820.211(2)(c) of the Regulations.
30. The Tribunal concludes that cl 820.211(2) is met by the applicant at the time of the visa application.
31. The Tribunal also finds that at the time of this decision, the applicant continues to meet cl 820.211(2) such that cl 820.221(1)(a) of the Regulations is satisfied.
32. Given the evidence the Tribunal is satisfied that the criterion are met, concluding that the matter should be remitted for reconsideration.

DECISION

33. The Tribunal remits the application for reconsideration, with the direction that the first named applicant meets the following criteria for a Subclass 820 visa:
 - cl 820.211(2) of Schedule 2 to the Regulations;
 - cl 820.221(1)(a) of Schedule 2 to the Regulations.
 - As the applicant (first named applicant) meets the criteria for the grant of the Subclass 820 Partner visa, it follows that the secondary applicant satisfies the requirement for the Subclass 820 Partner visa grant and meets cl 820.321(a) of Schedule 2 to the Regulations.

Donna Petrovich
Member